

DEPARTMENT OF STATE REVENUE

04920371.LOF

LETTER OF FINDINGS NUMBER 92-0371 ST

Sales and Use Tax

For The Periods: December 31, 1987 through and including December 31, 1990

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Departments official position concerning a specific issue.

ISSUES

1. Sales Tax - Assets

Authority: IC 6-2.5-3-2

The taxpayer protested the assessment of sales or use tax on certain assets purchases where sales tax had been paid and for labor charges paid to construction labor.

2. Negligence Penalty - Imposition

Authority: IC 6-8.1-10-2.1(e); 45 IAC 15-11-2(c)

The taxpayer protested the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer operates a paving company. The taxpayer uses lump sum contracts with individuals and businesses to lay asphalt and/or seal parking lots and related operations. The taxpayer protested the assessment of tax on only two audit line items and the negligence penalty. The taxpayer designated these as items #96 and #102. Item #96 consists of thirty-nine (39) separate elements (leasehold improvements). Item #102 is separate and has only one element. The taxpayer conceded the remaining audit items and issues.

DISCUSSION

The taxpayer protested the assessment of use tax on leasehold improvements (item #96) and concrete (item #102). The use tax is imposed under IC 6-2.5-3-2 which states in pertinent part as follows:

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection if

(1) the state gross retail or use tax has been previously imposed on the sale or use of that property;
or...

The taxpayer provided the department with evidence of payment of the sales tax on all tangible personal property purchased and consumed as part of the leasehold improvements contained in item #96. The remaining four charges were labor charges and non-taxable. The taxpayer did not provide evidence of payment of the tax for item #102.

FINDING

The taxpayers protest is partially sustained. The taxpayers protest of the assessment of use tax on item #96 is sustained. The taxpayers protest of the assessment of use tax on item #102 is denied.

3. Negligence Penalty - Imposition

DISCUSSION

The negligence penalty imposed under IC 6-8.1-10-2.1(e) may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(c).

The taxpayer has failed to establish reasonable cause for the deficiency remaining after the adjustments required by this letter.

FINDING

The taxpayers protest is denied.

CONCLUSION

The taxpayers protest is partially sustained. The taxpayers protest of the assessment of tax on item #96 is sustained. The taxpayers protest of the assessment of tax on item #102 and the negligence penalty is denied.